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The Bazooka Case

A small story from New York City last week provides a valuable lesson in due process that many of us, in our zeal to criticize admitted excesses of the United States Supreme Court, are apt to forget. Our story turns on the Sixth Amendment right to legal counsel. It begins last December 11.

On that day, according to the police, three anti-Castro Cubans fired a bazooka at the United Nations building to divert attention from the proceedings underway inside. The incident, it will be recalled, grew out of a speech to the General Assembly by Fidel Castro's right-hand man, Maj. Ernesto Che Guevara. This much is beyond dispute: Someone did fire a bazooka shell into the East River while Guevara spoke.

A short time later, New York police picked up Julio Carlos Perez, a former Central Intelligence Agency employe in Havana, and two brothers, Ignacio and Guillermo Novo. The three denied complicity in the crime and were released. But a week later, the police had second thoughts. They took the men into custody again, and this time they got a confession.

Last Tuesday the case came before Justice J. Irwin Shapiro of the New York Supreme Court in Queens. There Peter James Johnson, lawyer for the three accused Cubans, pleaded the Constitution in behalf of his clients. The people's case, he argued, hinged solely on the confessions, and the confessions were obtained in defiance of the defendants' constitutional rights.

Applying the United States Supreme Court ruling in the Escobedo case, Mr. Johnson contended that he should have been available to his clients after they were picked up for questioning the second time. In-

stead, he asserted, he had been required to cool his heels in the station house from 6:15 p.m. until the police had extracted confessions from each of the suspects, about five hours later. Was it possible the police were unaware of his presence? Hardly. He repeatedly asked to see his clients. Perhaps the police did not know he was representing the Cubans. They had known he was, said Mr. Johnson, for a week.

The judge was not long in recognizing the similarities between this case and the case of Danny Escobedo, charged with murder in Illinois. Escobedo's lawyer, too, was waiting in the station house to see his client. In fact, he even saw him at a distance. But when he asked to talk with him, the police refused. The United States Supreme Court, in a much-criticized opinion, ruled that Escobedo's confession was inadmissible. In the case of the three Cubans, Justice Shapiro ruled in a like manner.

In our view, both decisions were correct. The plain language of the Sixth Amendment allows for no other opinion. "In all criminal prosecutions," says the Constitution, "the accused shall enjoy the right . . . to have the assistance of counsel for

his defense." This guarantee has generally been honored in the courtroom. What the Escobedo case established was the right to pre-trial counsel if the police move from the simple eliciting of facts to the making of an accusation. When the police accuse a man of a crime, he is clearly called upon to offer some defense, if he can. In preparing such a defense, the Constitution says he shall have access to legal counsel. What could be plainer than that? Surely a lawyer is of little use if, in the absence of counsel, the po-

lice have already extracted an admissible confession.

But, critics of the Escobedo ruling argue, many crimes would go unpunished if the police were hampered in their questioning of suspects. Doubtless they would, and doubtless, too, the policeman's lot is not always a happy one. Whose is? The purpose of the Constitution, however, is not to make the police happy. Its purpose, among other things, is to protect the individual from false accusations and slipshod proceedings that may lead to injustice. Punishing crimes is one thing; punishing criminals may be something else if constitutional safeguards are dismissed for convenience's sake.

On Wednesday, Perez and the Novo brothers will go back to Justice Shapiro's court, where their guilt or innocence will be established. If the police have done their work, and not merely counted on the defendants to save them the trouble, justice may be served there as well. If, because they haven't, Perez and the Novos go free, no doubt the Escobedo ruling will be falsely accused.

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